



INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference BLATA-008	FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/BR2004/000168	International filing date (day/month/year) 09.09.2004	Priority date (day/month/year) 12.09.2003	
International Patent Classification (IPC) or national classification and IPC B65D43/02, B65D21/02			
Applicant BRASILATA S.A. EMBALAGENS METALICAS et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 10.03.2005		Date of completion of this report 14.12.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Segerer, H Telephone No. +49 89 2399-8201 	

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International application No.
PCT/BR2004/000168

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
 - ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

Description, Pages

1-9 as originally filed

Claims, Numbers

1-6 as originally filed

Drawings, Sheets

1/5-5/5 as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-6
	No: Claims	
Inventive step (IS)	Yes: Claims	1-6
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-6
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

V.1) Reference is made to the following documents:

- D1: US-A-4 476 993 (KROUT GERALD R) 16 October 1984 (1984-10-16)
- D2: US 2003/089715 A1 (SENE ANTONIO ROBERTO ET AL) 15 May 2003 (2003-05-15)
- D3: DE 89 01 244 U (MAY-WERKE GMBH & CO EMBALLAGEN) 18 May 1989 (1989-05-18)
- D4: DE 900 659 C (CARL RETTMAYER) 28 December 1953 (1953-12-28)
- D5: US-A-5 899 352 (GUARDA MANOEL JOSE ET AL) 4 May 1999 (1999-05-04)

V.2) Lack of inventive step

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of independent claim 1 does not involve an inventive step in the sense of Article 33(3) PCT.

The documents D1 as well as D2 (which are both regarded as being the closest prior art to the subject-matter of claim 1) disclose a closing arrangement according to the preamble of claim 1; i.e. a closing arrangement which is (suitable) for a tubular or substantially tubular (metal) can body (cf. D1, fig.1 and 2 in combination with col. 3, lines 55-59 or D2, fig.2 in combination with par [0015]-[0024]) and which comprises a plastic lid with central "sealing portion" (engaging a corresponding seat located at the open upper end of the can) and a peripheral, integral tamper element ("seal... (with) lower skirt seated around the upper end (of the can) body and (with) an upper edge (portion) ... incorporated to the sealing portion (of the lid) by means of ... bridges which are ruptured ... upon the first opening of the lid").

The subject-matter of claim 1 therefore only differs from this known closure arrangement (according D1 or D2) in that (cf. claim 1, characterizing portion) "the upper end of the tubular (can) body ... presents a cross section contour that is smaller than the largest

...contour of the remainder of the tubular body, so that ... the lid is maintained internal to said largest ... contour of the tubular (can) body".

The problem to be solved by the present invention may therefore be regarded as to provide an improved closure arrangement avoiding the mutual contact of the lids of two adjacent lidded cans disposed side by side.

The solution proposed in claim 1 of the present application (tubular can with upper end having a smaller cross section contour, i.e. a reduced diameter) cannot be considered as involving an inventive step (Article 33(3) PCT) in view of D3 (cf. D3, fig. 1 and 2 and in particular teaching according to **D3, page 5, lines 22-28**) teaching (for lidded cans) the provision of a can body with upper end having a reduced diameter in order to solve the abovementioned problem posed. **Consequently, claim 1 cannot be considered inventive in the sense of Article 33(3) PCT (suggested combination of D1 or D2 with D3).**

Dependent claims 2-6 do also not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step, since they define embodiments which appear to be also covered by said suggested combination of D1 (or D2) with D3; cf. e.g. claim 5 defining a converging transition portion connecting basic and upper portions of the can as shown in fig.2 of D3 (see also D4, fig.2). Remark: The double seemed upper wall of the can (cf. claim 6) is covered by the suggested combination of D2 with D3 (cf. D2, fig.2, wall ref. 20 affixed by double seaming to the tubular body ref. 10).

V.3) Further Comments

- Additional relevant background art (cf. D1-D4) should have been cited (Rule 5.1(a)(ii) PCT) wherein the citation of documents (cf. Brazilian patent applications cited on pages 2 and 6 in addition to D5) should be based on the publication numbers and grouped under Item "Prior Art".

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(SEPARATE SHEET)**

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- Page 9, last paragraph referring to the scope of the invention should have been clarified ("scope.... as defined by the claims) and claims 1-6 defining "an improvement..." should have been clarified by defining "a closure arrangement comprising...".